

37 Am. Jur. 2d Fraud and Deceit § 49

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Fraud and Deceit

George Blum, J.D., John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Karl Oakes, J.D. and Eric C. Surette, J.D.

III. Means of Perpetration

B. False Pretenses and Fraudulent Devices, Schemes, and Tricks

§ 49. Fraud as to nature or contents of contract or other instrument

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, **Fraud** 27, 28

A.L.R. Library

Seller's liability for fraud in connection with contract for the sale of long-term dancing lessons, 28 A.L.R.3d 1412

Forms

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit § 187](#) (Complaint, petition, or declaration—For rescission—Fraud in procuring deed—Deed represented as being another type of instrument)

A fraudulent device, the effects of which have been frequently and consistently remedied in the courts, in the absence of negligence barring relief, is willful misstatement or conduct which deliberately gives an erroneous impression as to the nature or contents of a document or written instrument.¹ In all cases (including negotiable instruments, as between the parties), assuming the absence of facts which will create an estoppel,² or of facts negativing a right to rely and disclosing negligence under the circumstances, which facts are not usually held to exist where deliberate deception or artifice is practiced,³ any willful misreading of the terms of the instrument, or willful misrepresentation, misstatement, or other misleading conduct as to its contents, is sufficient to form a basis for a charge of fraud.⁴ More particularly, if one knowingly misrepresents the contents of a writing,⁵ or if the fact is established that the signer was lulled by fraud and deceit into omitting to read the document personally, a charge of fraud is maintainable by the defendant in an action upon it by one who, or whose agent, misrepresented the contents of the document.⁶ This is particularly true where the signer is an illiterate person.⁷

CUMULATIVE SUPPLEMENT

Cases:

A party who has the capacity and opportunity to read a written contract cannot afterwards set up fraud in the procurement of his signature to the instrument based on oral representations that differ from the terms of the contract. [Raysoni v. Payless Auto Deals, LLC](#), 323 Ga. App. 583, 753 S.E.2d 313 (2013).

[END OF SUPPLEMENT]

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Footnotes

¹ Am. Jur. 2d, Contracts §§ 214 to 217; Am. Jur. 2d, Deeds §§ 167 to 171; Am. Jur. 2d, Release §§ 23, 24.

² [Hi-Pro Fish Products, Inc. v. McClure](#), 346 F.2d 497 (8th Cir. 1965); [Minneapolis Threshing Mach. Co. v. Huncovsky](#), 49 N.D. 1086, 194 N.W. 830 (1923).

³ §§ 260, 261.

⁴ [Guice v. Burrage](#), 156 F.2d 304 (C.C.A. 5th Cir. 1946) (execution of mineral deed upon false representation that the instrument was a copy of a mineral lease); [Hi-Pro Fish Products, Inc. v. McClure](#), 346 F.2d 497 (8th Cir. 1965).

⁵ [Mazuran v. Stefanich](#), 95 Cal. App. 327, 272 P. 772 (1st Dist. 1928); [City View Apartment & Storage Co. v. Neiss](#), 4 Ohio L. Abs. 466, 154 N.E. 161 (Ct. App. 9th Dist. Summit County 1926).

⁶ [B. E. Robuck, Inc. v. Walker](#), 212 Ga. 621, 94 S.E.2d 696 (1956); [Farm Bureau Mut. Ins. Co. of Ind. v. Seal](#), 134 Ind. App. 269, 179 N.E.2d 760 (1962).

⁷ [Smith v. Mosbarger](#), 18 Ariz. 19, 156 P. 79 (1916); [W.R. Grace & Co. v. Strickland](#), 188 N.C. 369, 124 S.E. 856, 35 A.L.R. 1296 (1924).

As to competence of a party as an element of a fraud-based cause of action, see § 31.